IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 3495 of 2006

DATE OF DECISION: 18.8.2006

Sadhu Singh

..... PETITIONER

VERSUS

State of Haryana and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr.Tribhuvan Singla, Advocate for the petitioner.
Mr.Harish Rathee,Sr.DAG, Haryana for the respondents

M.M.S.BEDI,J.

The petitioner seeks a writ in the nature of certiorari under Article 226 of the Constitution for quashing orders dated 3.2.2006 (Annexure P-10) and 27.6.2000 (Annexure P-6) for not recommending his name for the post of Clerk against the 20% quota as per Haryana Civil Services (Promotion of Group C & Group D Employees) Rules,1998 (for short 1998 Rules)

Brief facts, relevant for the decision of the case, are that the petitioner was appointed as a Peon on 9.12.1981 with the Education Department of Haryana. He was regularised on 5.12.1982. On 15.5.1992 (Annexure P-1) the petitioner was promoted and adjusted as Laboratory

Assistant School Cadre in the grade of Rs.950-1500/- plus usual allowances as sanctioned by the Haryana Government. At that stage the grade of the Peon was Rs.750-940/-. The grade was revised w.e.f. 2.2.1996 in the year 1998 as Rs.3050-4590/-. The cadre of Clerk in the Education Department of Haryana use to be governed by Haryana Education Department Sub Offices Ministerial (Group C) Services Rules,1983 (for short '1983 Rules'), which prescribed that 80% posts of Clerks were to be filled up by direct recruitment and 20% by way of promotion from Group C or D employees, whose scales of pay were less than Clerk and were matriculate. The '1983 Rules' were amended in 1998 which are now known as Haryana Civil Services (Promotion of Group C & Group D Employees) Rules,1998. The eligibility for the post of Clerk as per Rule 3 is as follows:

> "**Eligibility for promotion:-** Notwithstanding any thing to the contrary contained in any other service rules framed in this behalf, Group C and Group D employees who are Matriculate and have put in five years service on Group C or Group D posts, whose scales of pay are less than or equal to the scale of the post of Clerk, shall be eligible for promotion to the 20% posts of Clerk reserved for them. When the turn of such employees comes up for promotion to the post of Clerk, they shall have to pass a written department test in Hindi and English language of the Matriculation level to be conducted by the Head of the Department concerned for promotion to the post of Clerk. Such promotion shall be made on the basis of seniority-cum-fitness."

On 23.5.2000 (Annexure P-6),the Director Secondary Education, Haryana Chandigarh, respondent No.2 issued a letter regarding promotion of Class-IV employees to the posts of Clerks making a special mention that the names of the Laboratory Attendants were not to be recommended. The petitioner and the others filed CWP No. 20504 of 2002 in this Court, which was disposed of on 14.1.2003 (Annexure P-7) with a direction to the respondent authorities to decide their representation. The claim of the petitioner was rejected vide order dated 20.10.2003 (Annexure P-8) on the ground that the post held by the petitioner as Laboratory Attendant was Class III and the grade of Laboratory Attendant was equal to that of Clerk. The petitioner again filed CWP NO. 3427 of 2005 challenging order dated 20.10.2003 (Annexure P-8) before this Court. The petition was disposed of vide order dated 21.7.2005 (Annexure P-9) directing respondents to consider the case of the petitioner in accordance with 1983 Rules and the order reads as under:-

> " We find that the respondents in their written statement have pleaded that the petitioner was not entitled to the post of Clerk as he did not fulfill the qualifications laid down in the Rules of 1983. It has,however, been argued by the learned counsel for the petitioner that the Rules provided that twenty percent posts of Clerks were to be filled in by promotion from amongst Group C employees whose scale of pay was less than that of a Clerk and Group D employees who were matriculates on the basis of seniority-cum-fitness. We find that this aspect of the matter has not been dealt with in the order Annexure P-8. We

accordingly direct the respondents to reconsider the case of the petitioner in the light of the above observations and take a decision within a period of six months from the date that a certified copy of this order is supplied to them."

Thereafter, respondent No.2 again considered the case of the petitioner for the post of a Clerk vide order dated 3.2.2006 (Annexure P-10) under 1983 Rules holding that the pay of the petitioner is equivalent to the post of Clerk, thus he is not eligible to be considered for promotion as Clerk. In the instant petition the order dated 3.2.2006 (Annexure P-10) has been challenged by the petitioner.

Notice of motion was issued to the respondents. Respondents 1 to 4 have filed written statement taking up the plea that the petitioner had accepted the promotion as Laboratory Attendant in the higher pay scale of Rs.950-1500/- and the post of peon carried the pay scale of Rs.750-940. It has been averred in the written statement that the post of Laboratory Attendant is a Group C post as per 1998 Rules and as such the petitioner is not eligible to be considered for promotion to the post of Clerk under 1998 Rules. There is nothing in 1998 Rules that the employees of Group C, whose scales of pay are equal to the scales of the posts of Clerks have been made eligible for promotion to the post of Clerk. The petitioner is already working on a Group C post as Laboratory Attendant carrying the pay scale equivalent to that of a Clerk. In that regard reliance has been placed on Rule 9(1)(j) of 1998 Rules, which reads as follows:-

" 9(1)(j) in the case of Clerk.

(i) Twenty per cent by promotion from amongst Group-C

employees whose scale of pay is less than that of a Clerk and Group-D employees who are matriculates on the basis of seniority cum fitness; or by transfer of deputation of an official already in the service of any State Government or the Government of India; and

(ii) eighty per cent by direct recruitment."

It is claimed that the petitioner is not entitled for promotion to the post of Clerk as his pay as Lab. Attendant is not less than that of a Clerk. The entitlement of the petitioner under 1998 Rules is also contested by asserting that the petitioner has been working as Senior Laboratory Attendant, which is a Class-III posts and as such he cannot be promoted as Clerk.

We have heard learned counsel for the parties and gone through the relevant rules. The main grievance of the petitioner throughout is that the respondents have blocked his career there being no promotional avenues after Senior Laboratory Attendant but in case he is promoted to the post of Clerk, he can further be promoted to the post of Senior Assistant and Superintendent. The entitlement of the petitioner for consideration to the post of Clerk in 20% quota as per 1998 Rules has also been gone into by us carefully in context of the other provisions. It is pertinent to observe here that the pay scale of Clerk is Rs.3050-4590 and the pay scale of Senior Laboratory Attendant is also Rs. 3050-4590. Vide notification dated 6.8.1998 (Annexure P-2) in Haryana Education Department Sub Offices, Ministerial (Group C) Service Amendment Rules,1998, the following sub-rule was incorporated in Rule 9 regarding the mode of appointment in the case of Senior Laboratory Attendant:-

" 9 (o) in the case of Senior Laboratory Attendant:-

(i) 20% by promotion from amongst Laboratory Attendant; and

(ii) 80% by direct recruitment ; or

(iii) by transferor deputation of an official already in the service of any State Government or India."

The petitioner has already been appointed as Senior Laboratory Attendant and is getting the pay scale of Senior Laboratory Attendant i.e. Rs.3050-4590, which is equivalent to the pay scale of Clerk. The petitioner is holding the post of Senior Laboratory Attendant, a Class-III Group C post, as such the post of Clerk cannot be filled from a cadre carrying the equivalent pay scale. The petitioner having already availed the benefit of promotion and having been placed in a higher pay scale cannot claim as a matter of right the deviation from the cadre under the garb of his eligibility under Rule 3 of 1998 Rules merely because the pay scale of Senior Laboratory Attendant is equivalent to the pay scale of a Clerk.

The petitioner has no right to be considered for promotion as Clerk against 20% quota for promotees being a Class-IV employee. As a matter of fact the petitioner is a Class -III employee and is governed by Haryana Education Department Sub Offices, Ministerial (Group C) Service Amendment Rules,1998 which prescribes 20% quota for promotion for the post of Senior Laboratory Attendant from amongst the Laboratory Attendants.

We do not find any force in the contention of the learned counsel for the petitioner that meager chances of promotion for a Laboratory Attendant is a justiciable cause of action for the petitioner. It is

a settled principle of law that chances of promotion is neither a fundamental right nor is a condition of service in view of the judgment of this Court in **Raunaq Lal Arora and others vs Punjab School Education Board through Secretary, Punjab School Education Board, Mohali, District Ropar and others 1993(4) Recent Services Judgments 119.**

The writ petition is without merit and is dismissed as such.

(M.M.S.BEDI)
JUDGE

August 18,2006
TSM

(M.M. KUMAR)
JUDGE